



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201519041

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

FEB 10 2015

U.I.L. 408.03-00

T.E.P.'R.A.T.3

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXX

Bank C = XXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxx:

This is in response to your request dated October 11, 2013, as supplemented by correspondence dated December 22, 2014, submitted on your behalf, by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

On September 11, 2013, Taxpayer A received a distribution of Amount D from IRA X. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 408(d)(3) of the Code was due to her mental condition which impaired her ability to make sound financial decisions.

Taxpayer A is an elderly widow who relied on her husband to make all of their financial decisions. Following the death of her husband, Taxpayer A was diagnosed with anxiety and clinical depression as documented in a letter from her doctor. Her mental state had deteriorated to the point where her psychiatrist recommended extreme therapy. Due to Taxpayer A's inability to make sound decisions regarding her health and business, her daughter began to oversee Taxpayer A's activities in accordance with a Health Care Proxy and Durable Power of Attorney.

Taxpayer A had IRA X with Bank C. IRA X was a traditional IRA and was invested in a five-year certificate of deposit (CD) that was due to expire in September 2012. Taxpayer A incorrectly believed that IRA X was a Roth IRA and was told by an accountant and an estate planning attorney that distributions from a Roth IRA are non-taxable. Based on this information and without informing her family, on September 11, 2012, Taxpayer A withdrew Amount D from IRA X and put the funds in her checking account. Due to her mental state, Taxpayer A lacked an understanding regarding the type of IRA she possessed.

During March 2013 Taxpayer A went to her tax preparer for the preparation of her tax return for the 2013 taxable year. At that time she was informed that IRA X was a traditional IRA and the distribution of Amount D was a taxable distribution.

Based on the foregoing facts and representations, you request that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the

payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was due to her mental condition which impaired her ability to make sound financial decisions.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met

with respect to such contribution, the contribution of Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.


No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxx, at xxxxxxxxxxxxxxxxxxxx. All correspondence should be addressed to SE:T:EP:RA:T.

Sincerely yours,

  
Sherri M. Edelman, Manager  
Employee Plans Technical Group 7576

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc:

xxxxxxxxxxxxxxxx.